

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YOTTA TECHNOLOGIES INC.,
Plaintiff,
v.
EVOLVE BANK & TRUST,
Defendant.

Case No. 3:24 CV-06456-TLT

JOINT DISCOVERY LETTER

Trial Date: June 21, 2027
Date Action Filed: Sept. 13, 2024

Pursuant to this Court’s October 1, 2025 Discovery Order (Dkt. No. 85) (the “Order”), the parties met and conferred in good faith to resolve their dispute concerning RFPs 34, 35, 36, 39, 40, 42, and 44 (the “Category 3” RFPs referenced in the Order) prior to filing the letter. The parties were able to resolve their disputes regarding RFPs 40, 42, and 44, but were unable to resolve their disputes regarding RFPs 34, 35, 36, and 39. Pursuant to the Order and the Court’s Standing Order in Civil Cases § 21, Plaintiff and Defendant submit this joint letter addressing Plaintiff’s request to compel Defendant to produce certain documents.

1 Dated: October 15, 2025

Respectfully submitted,

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3
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I. Plaintiff's Section

Reserve Funds (RFPs 34 and 35): These Requests seek documents “relating to Defendant’s contributions to and withdrawals from reserve funds relating to FBO accounts” and “[d]ocuments sufficient to show all transactions” involving the same reserve funds. Defendant has represented that it created two accounts related to Synapse users, and Plaintiff agreed to limit these Requests to those two accounts.

Both parties have argued that these accounts are relevant to the case. Yotta alleges in its Amended Complaint that these reserve funds were not sufficient to make up for the money Evolve stole, and on at least one occasion Evolve misappropriated nearly \$8 million from one of the reserve accounts. *Id.* ¶127. In its MTD, Evolve argues that it did not steal customer funds because the supposed \$35 million reserve fund exceeded the amount that Defendant stole from customers. Dkt. #65 at 18 (\$18 million in theft “more than offset by Evolve’s \$35 million reserve infusion”). Evolve also repeatedly argues that the fact that Synapse funded a reserve account proves that it did not intend to steal customer funds. *Id.* at 12, 13, 14-15. Yet Evolve’s own September 25, 2023 letter demonstrates that the Reserve Accounts were insufficient, stating that the “Reserve Account” balance is “deficient” and demanding that Synapse fund the Reserve Account “with an amount equal to \$50 million.” Dkt. #65-2, at p. 5.

To determine the facts regarding these reserve funds, RFPs 34 and 35 seek documents sufficient to show transactions involving the reserve funds and communications relating to contributions and withdrawals from these funds. Evolve admits that there is a ledger for each of the two reserve accounts at issue. Yotta has requested that Evolve produce those two ledgers and, to the extent the ledgers do not provide this information, documents sufficient to identify the transactions in these accounts and the source/recipient of the funds being transacted. These are highly relevant, and minimally burdensome documents to produce. Yotta also requested all communications relating to contributions to and withdrawals from these two accounts that occurred after January 1, 2020. Again, these documents are critical to understanding why money was withdrawn from the accounts, how much money was subsequently added, and why the accounts were ultimately insufficient.

Unable to dispute that both parties have placed the sought documents at issue in this case, Evolve argues that Yotta has not requested these documents. But the two reserve accounts are indisputably “reserve funds relating to FBO accounts.” (Similar documents were also sought in RFPs 14 and 25. Ex. A.) Evolve’s also argues that there are only two transactions that, in Evolve’s opinion, directly impact the Synapse FBO accounts. Evolve will agree to produce documents only about those two transactions. This is improper. Evolve is trying to make itself the arbiter of which transactions in these accounts somehow relate to FBO accounts. That makes no sense because the reserve account as a whole relate to the FBOs containing Yotta end user’s funds. As Evolve admits, the reserve accounts were the safeguard to address shortfalls in these FBOs and any transactions that increased or decreased those funds are relevant.

The documents at issue are limited, narrowly identified, and minimally burdensome. Evolve should produce: (1) the two reserve accounts ledgers and, to the extent the ledgers do not provide this information, documents sufficient to identify what the reserve accounts transactions were and the source/recipient of the funds being transacted; and (2) all communications relating to contributions to and withdrawals from these two accounts that occurred on or after 1/1/2020.

The Mercury Migration (RFP 36): This Request relates to the botched migration of \$3.2

1 billion in end user funds from the Synapse platform onto its own platform and the resulting
 2 loss of user funds. Yotta has pled that there were at least two critical errors in the migration. **First**,
 3 at the time of the migration, Evolve knew that it had stolen at least \$18 million in fees from the
 4 FBO account(s) that held Yotta and Mercury users' funds. Evolve nevertheless paid Mercury users
 5 in full, thereby requiring the remaining users to absorb the full loss associated with the theft.
Second, even setting aside the shortfall, Evolve transferred more Mercury customer funds than it
 was supposed to be holding, thereby increasing the shortfall in Yotta customer funds. As a result,
 the Mercury migration led to a loss of at least \$50 million of end user funds.

6 Yotta served the First Requests (including RFP 36) in February 2025. Evolve served
 7 objections and the parties held countless meet and confers on RFP 36, and others. Yotta moved to
 8 compel Evolve to produce documents responsive to RFP 36 on July 3, 2025 (Dkt. #62) and again
 9 on August 4, 2025 (Dkt. #74). On October 1, 2025, the Court set an October 15 deadline for the
 10 parties to resolve their disputes concerning various Requests including RFP 36. Dkt. #85. Eight
 11 months after RFP 36 was served and after countless meet and confers and two separate motions to
 12 compel, on October 13, Evolve for the first time (a) revealed that it had hired an expert to conduct
 13 an after-the-fact study to prove that it did nothing wrong in connection with the Mercury migration
 14 and (b) proposed that its production of its own expert report satisfy RFP 36. This is obviously
 improper and no substitute for actual discovery of the relevant facts. Even if an expert report could
 somehow aid the discovery process, it should have been disclosed and produced eight months ago,
 not after Yotta has been forced to file its third motion to compel the Mercury migration documents.
 The current fact discovery cut-off is December 19, 2025. While Yotta hopes that it will be
 extended, it simply is not possible to stage discovery at this late date.

15 While Evolve has argued that RFP 36 is overly burdensome, it has refused to explain the
 16 nature or magnitude of the burden, or to propose any way in which the burden can be streamlined.
 17 To the extent there are a lot of migration-related communications that deal with irrelevant logistical
 18 minutiae, Yotta very much wants to avoid the production of those documents. Because Evolve has
 refused to work with Yotta to minimize any burden imposed by the Request, the only way that
 Yotta can identify to minimize the burden is to limit production to those custodians who have the
 most important Mercury-migration documents.¹

19 **Fees & Charges (RFP 39):** This Request relates to fees and charges improperly levied on
 20 Yotta end user funds, causing a shortfall. Yotta pleads that at least two categories of fees and

21 ¹ During the meet and confer, Yotta proposed to narrow RFP 36 and to make it subject to a
 22 custodian-limitation. Yotta's proposal, which follows, remains acceptable to Yotta: (1) Documents
 23 sufficient to show the amount of funds transferred and the accounts from and to which they were
 24 transferred; (2) Documents sufficient to show the processes, procedures, steps, and actions that
 25 were utilized to migrate the funds; and (3) All communications concerning (a) the processes,
 26 procedures, steps, and actions that should have been utilized to properly migrate the funds
 27 (including but not limited to ensuring the correct amount of funds were migrated), (b) the failure
 28 to utilize any of the processes, procedures, steps, or actions in (a), (c) the determination as to which
 FBOs held Mercury end user funds prior to the migration, (d) the transfer, allocation or re-allocation
 of Mercury end user funds to particular FBO's in connection with the migration, (e) the effect of
 the migration on (i) any FBO account, (ii) end users of non-Mercury fintech(s) or their funds, or
 (iii) the Synapse ecosystem, (h) any shortfall in any end user funds or FBO funds resulting from or
 relating to the migration, (f) any discrepancies or inaccuracies in records relating to or affecting the
 migration, (g) any suggestion, allegation, claim, or concern that too much money was migrated, or
 (h) any issues, concerns, problems, or complaints regarding the migration raised by Synapse, any
 fintech, any bank, or any employee or agent of Evolve.

1 charges were improperly debited from FBO's containing user funds: Account Analysis Charges
 2 and Tabapay Fees. However, given the massive shortfall in funds and the lack of transparency into
 3 Evolve's withdrawals from and mismanagement of customer funds, Yotta also seeks to understand
 4 whether there were any other fees charged to or debited from the relevant FBO accounts that were
 5 not authorized by end users.

6 Although Evolve has agreed to produce certain fee-related documents, Evolve has refused
 7 to produce communications with anyone concerning any other unauthorized fees or charges except
 8 for communications with Synapse. Evolve has refused to produce internal communications
 9 regarding any other unauthorized fees or charges and has also refused to produce communications
 10 with other banks or fintechs concerning such unauthorized charges. Internal communications are
 11 plainly relevant, particularly given that Evolve has agreed to produce any responsive
 12 communications with Synapse. Communications with third parties are also relevant; because the
 13 FBO accounts contain comingled funds, another fintech or bank may have identified unlawful
 14 charges or fees in a shared FBO account that would impact Yotta end users. With respect to the
 15 burden, to the extent Evolve was not unlawfully charging any other fees to end user's FBO
 16 accounts, this Request will result in the production of a limited number of documents, and possibly
 17 no documents beyond those that are responsive to other Requests. To the extent Evolve was
 18 unlawfully charging other fees, those documents are highly relevant and the burden of producing
 19 them is outweighed by their significance.

20 Accordingly, in addition to the documents Evolve has agreed to produce, it should be
 21 ordered to produce: all communications within Evolve, and between Evolve and any bank, fintech
 22 company, or payment recipients concerning any all amounts (other than withdrawals or payments
 23 initiated by an end user) that were applied, charged to, or debited from any (1) Synapse-related
 24 FBO account, (2) Synapse end user account, or (3) Synapse end user funds.

25 **II. Defendant's Section**

26 Despite Evolve agreeing to produce the documents requested in RFP Nos. 34 and 35, Yotta
 27 refuses to accept Evolve's proposal and demands that Evolve agree to produce documents beyond
 28 the plain language of the requests. Yotta's request should be denied.

Evolve has agreed to produce the documents sought by RFP No. 34. RFP No. 34 seeks "All
 documents and communications relating to Defendant's contributions to and withdrawals from
 reserve funds relating to FBO accounts, including but not limited to any accounts related to Synapse
 End Users." In the Parties' August 4, 2025 joint discovery letter, "Plaintiff agree[d] to limit these
 Requests to transactions related to Synapse users, which includes Plaintiff's users." ECF No. 74 at
 3. Hoping to avoid the need to further burden the Court with this dispute—and despite the request's
 facial overbreadth in seeking "all documents and communications," *see In re Yosemite Nat'l Park*
Hantavirus Litig., 2016 WL 5335550, *5 (N.D. Cal. Sept. 23, 2016) (denying motion to compel
 documents where propounding party's request for "all documents" is "broad and not tailored to
 records that would actually be relevant")—Evolve agreed in good faith "to produce all documents
 and communications relating to Evolve's contributions to and withdrawals from reserve funds
 relating to FBO accounts related to Synapse End Users to the extent such documents exist, are
 within Evolve's possession, custody, or control, and are uncovered after a diligent search and
 reasonable inquiry[.]" i.e., exactly what the request (as modified) asks for. Accordingly, there is
 nothing to compel at this time.

Yotta, however, refuses to take "yes" as an answer and contends it is entitled to "all
 documents and communications" relating to *any* withdrawal or contribution from the two Synapse

1 reserve accounts. But that is not what the request asks for—it specifically limits the “contributions
2 to and withdrawals from reserve funds **relating to FBO accounts**[.]” Yotta now contends that the
3 “relating to FBO accounts” modified the “reserve funds” instead of “contributions to and
4 withdrawals from” and thus it should be entitled to “all documents and communications” related to
5 the two Synapse reserve accounts. But neither Synapse reserve accounts “relate[s] to” any FBO
6 account.” Rather, as explained in the Master Bank Service Agreement between Synapse and
7 Evolve, the Program Manager Reserve Account(s) (i.e., the Synapse reserve accounts) were
8 required to provide security for Evolve, not end users. Accordingly, under Yotta’s new proffered
9 interpretation of “relating to FBO accounts,” there would be no responsive documents. But that is
10 not Evolve’s position; rather, Evolve has agreed to produce all documents and communications
11 relating to contributions and withdrawals to the two Synapse reserve accounts that relate to the
12 Synapse FBO accounts. These are the only categories of documents that even arguably have
13 tangential relevance to this case. Yotta misstates Evolve’s position contending that it will only
14 produce documents related to two transactions. Rather, Evolve has agreed to review and produce
15 all documents and communications relating to any withdrawal or contribution that is related to the
16 Synapse related FBO accounts. If there are additional transactions that relate to the FBO Accounts,
17 Evolve will produce them.

11 Accordingly, there is simply no reason to compel any additional documents as any
12 contributions or withdrawals from the Synapse Reserve accounts that do not relate to the Synapse
13 FBO accounts (i.e., the bucket of transactions for which Yotta seeks **all documents and**
14 **communications**) are irrelevant to Yotta’s claims and are thus disproportionate to the needs of the
15 case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 285 F.R.D. 566, 570 (2012) (“‘All encompassing’
16 production requests do not meet Rule 34(b)(1)(A)’s reasonably particularity requirement, *in re*
17 *Asbestos Products Liability Litig. (No. VI)*, 256 F.R.D. 151, 157 (E.D. Pa. 2009), and discovery
18 rules do not allow a requesting party to ‘engage in the proverbial fishing expedition, in the hope
19 that there *might* be something of relevance[.]’”) (quoting *Tompkins v. Detroit Metropolitan Airport*,
20 278 F.R.D. 387, 388 (E.D. Mich. 2012)).

17 It is the same situation for RFP No. 35. RFP No. 35 asks for “[d]ocuments sufficient to
18 show all transactions involving reserve funds relating to FBO accounts, including but not limited
19 to any accounts related to Synapse End Users.” Evolve “agree[d] to produce documents sufficient
20 to show all transactions involving reserve funds relating to FBO accounts for Synapse end users or
21 Synapse Brokerage.” Again, exactly what Yotta requested (as modified). But Yotta demands an
22 entire accounting of the two Synapse reserve accounts without tying that demand to its actual
23 request or its claims in the case, and thus should be denied for the same reasons that the Court
24 should deny Yotta’s request as to RFP No. 34.

22 As drafted, RFP No. 36 seeks “All documents and communications relating to the 2023
23 migration of Mercury Technologies, Inc. funds off of Synapse’s systems and/or platform.” During
24 the hearing regarding the Parties’ discovery dispute, the Court advised that the request was facially
25 overbroad and should be narrowed. As a reminder, the only purported relevance that the Mercury
26 migration has to this case—is the wholly unsupported and outlandish allegation that Evolve over-
27 migrated \$50 million from the Synapse related FBO Account. Again, Yotta does not allege, nor
28 could it, that the Yotta End Users were ever assessed a fee based on this alleged over-migration;
nor does it allege that Evolve refused to return Yotta end user funds as a result, which should make
this allegation wholly irrelevant to any of Yotta’s claims. Nonetheless, in light of the Court’s
guidance that it believed that some narrowed discovery on the Mercury migration was in scope,
Evolve proposed to produce the final forensic audit report of the Mercury migration that was

1 conducted by an **independent third party auditing firm**, and then the Parties could revisit this
 2 request if necessary, in the event that, after reviewing the report, Yotta still believed it needs further
 3 documents. Yotta rejected that offer outright and continued to demand effectively a re-phrased
 4 demand of all documents and communications related to 2023 Mercury migration (by asking for
 5 “all communications” related to twelve different broad categories). Yotta’s refusal to even review
 6 the third party audit report before determining if these additional documents are necessary suggests
 7 bad faith and its continued instance on unduly burdensome, overbroad, and disproportionate
 8 discovery related to the Mercury migration should be denied.

9 Yotta again misrepresents Evolve’s position and the procedural history. Evolve has and
 10 continues to believe that discovery into the Mercury migration is irrelevant to Yotta’s claims and
 11 unduly burdensome and overbroad and it resisted any discovery on those grounds. In light of this
 12 Court’s guidance, Evolve is willing to produce an independent third party auditing report—not a
 13 created-for-litigation expert report—that evaluated the Mercury migration. Yotta should be
 14 required to review that report before proceeding with this additional discovery. Evolve has also
 15 shared with Yotta, including in the prior joint letter, the significant burden associated with
 16 reviewing, redacting, and producing the requested documents. If the Court believes a further
 17 burden declaration would assist it in its evaluation of this request, Evolve respectfully requests
 18 leave to file such a declaration.

19 For RFP No. 39, the Parties have narrowed their dispute, but Yotta refuses to relent on its
 20 demand that Evolve agree to produce “all documents and communications” related to hypothetical,
 21 unknown, and unspecified charges alleged assessed to the FBO accounts. This vague and facially
 22 overbroad request should be denied.

23 In the FAC, Yotta challenges the assessment of TabaPay fees and Account Analysis Fee to
 24 the FBO Accounts. At the hearing on the Parties’ joint discovery letter, Evolve understood
 25 Magistrate Judge Hixson to indicate that some discovery on these fees would be appropriate.²
 26 Accordingly, again despite the facial overbreadth of RFP Nos. 40 and 42, Evolve agreed to produce
 27 **all documents and communications** relating to debits from the FBO Account for either Account
 28 Analysis Fee or TabaPay fees to the extent such documents exist, are within Evolve’s possession,
 custody, or control, and are uncovered after a diligent search and reasonable inquiry. Evolve
 likewise agreed to produce the documents requested in RFP No. 44, which included “**all
 communications with Synapse** concerning Account Analysis Charges, TabaPay, **and/or any
 payment from or debit of FBO accounts related to Synapse end users** to the extent such
 documents exist, are within Evolve’s possession, custody, or control, and are uncovered after a
 diligent search and reasonable inquiry.” Despite Evolve’s significant compromise, Yotta demands
 that Evolve also produce all communications related to any fees, charges, or withdrawals from a
 Synapse-related FBO account even though it has not identified any other type of fee that was
 allegedly improper. As explained to Yotta, it is not even clear how Evolve would collect or search
 for such communications given their hypothetical and undefined nature. Yotta’s request for RFP
 No. 39 should be denied. *See Gilead Scis. v. Merck & Co., Inc.*, 2016 WL 146574, at *1 (N.D. Cal.
 Mar. 17, 2014) (“No longer is it good enough to hope that the information sought might lead to the
 discovery of admissible evidence.”).

² Evolve continues to contend (as explained in the Motion to Dismiss briefing and the Parties’ joint
 discovery letter) that even if Evolve did assess those fees to the FBO Accounts, it would not show
 any wrongful conduct by Evolve and thus any discovery as to these fees is disproportional to the
 needs of the case.